

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 27629 of 2007(L)

AGAINST THE ORDER IN EP. 507 /2005 IN
OS.1899/1997 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:

MAINA, W/O LATE VELU,
AGED 43, KULANGARATHARA PARAMBIL VEEDU,
CHILAVANNOOR, KADAVANTHARA,
ERNAKULAM, KOCHI-20.

BY ADV. SRI.JOSE JOSEPH ARAYAKUNNEL
SRI.VARGHESE PARAMBIL
SRI.ALBERT JOSEPH
SRI.BOBAN VARGHEESE

RESPONDENTS:

1. AVADI AMMAL, W/O LATE M.A.VELU,
(ASSUMED NAME), AGED 49, PADIYATHU KULAM
PALLIPARAMBIL HOUSE, KOVILAVATTOM DESOM,
ERNAKULAM.
2. MUNISWAMY, S/O AVADI AMMAL,
AGED 13(MINOR), PADIYATHU KULAM
PALLIPARAMBIL HOUSE, KOVILAVATTOM DESOM,
ERNAKULAM REPRESENTED BY HIS MOTHER
AVADI AMMAL.
3. GANAPATHY, S/O AVADI AMMAL,
AGED 7 (MINOR), PADIYATHU KULAM
PALLIPARAMBIL HOUSE, KOVILAVATTOM DESOM,
ERNAKULAM REPRESENTED BY HIS MOTHER
AVADI AMMAL.
4. RAMAKRISHNAN N.A, S/O PERUMAL MOOKEN,
AGED ABOUT 67, DOOR NO.28, KULANGARATHARA PARAMBIL
VEEDU, CHILAVANNOOR, KADAVANTHARA.
5. ALLY, W/O RAMAKRISHNAN, AGED ABOUT 50,
DOOR NO.28, KULANGARATHARA PARAMBIL VEEDU,
CHILAVANNOOR, KADAVANTHARA.

6. MAHESWARY, D/O RAMAKRISHNAN, AGED ABOUT 23, DOOR NO.28, KULANGARATHARA PARAMBIL VEEDU, CHILAVANNOOR, KADAVANTHARA.

7. ANITHA, D/O RAMAKRISHNAN, AGED ABOUT 27, DOOR NO.28, KULANGARATHARA PARAMBIL VEEDU, CHILAVANNOOR, KADAVANTHARA.

R4 TO 7 BY ADV. SRI.P.T.JOSE

R1 TO 3 BY ADV SRI.S.RAJKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 27629/07

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER IN I.A. NO: 983/07 IN O.S.110/07 PASSED BY THE I ADDL. MUNSIFF COURT, ERNAKULAM DT. 28.7.2007

EXT.P2: THE COPY OF THE I.A.NO: 983/07 DT. 30.1.07 FILED BY THE PETITIONER

EXT.P3: THE OBJECTION DT. 26.7.2007 IN I.A. NO: 983/07 FILED BY THE 1ST RESPONDENT

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/TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 27629 OF 2007

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Dated this the 7th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the 1st Addl. Munsiff court, Ernakulam in I.A.983/07 in O.S.110/07. The said interim application has been filed for a for a stay of all further proceedings in E.P.507/05 in O.S.1899/97 pending before the Munsiff court, Ernakulam until final disposal of the suit. The case of the plaintiff in O.S.110/07 is that she is the wife of deceased Velu who had obtained the decree against the tenant for eviction and therefore she is entitled to the property. According to her the defendants 1 to 3 in the suit had obtained a legal heir certificate by some means got themselves impleaded and are attempting to take delivery of the property. Coming to know about the same she moved an application for impleadement which was dismissed by the court below and one CRP 15/07 was filed. This court dismissed CRP with a direction to the

plaintiff herein for establishing her status as the widow of late Velu. It is on the basis of the said direction the suit is filed. Along with the suit an interim application is also filed on the ground that if further proceedings in the execution petition continued it will prejudicially affect her rights and therefore it should be stayed by an order of the court. The trial court held that the only provision for granting a stay are under S.10 CPC or order 41 Rule 5(2) CPC or order 21 Rule 29 CPC and that an application under Section 151 will not lie. He also held that it cannot be restrained by applying Section 41(b) of the Specific Relief Act.

2. Now, the question that arise for determination is who is the legal heir of deceased Velu. Everything depends upon the final result of the suit. The plaintiff cannot be blamed that she has not approached the executing court with a prayer for impleadment. Being a matter which involves the question of entitlement this court directed her to institute the suit and it is that suit which is now pending consideration. The learned counsel for the writ petitioner

has cited before me the decision of the Apex court reported in ***Bhame Amma v. Venkappa Bhatta (AIR 1961 Kerala 178)***. A perusal of the facts of the case would reveal that in execution of a small cause decree the property was sold and the auction purchaser applied for delivery of the property then it was resisted and there was a removal resistance application which was dismissed. The person who obstructed moved a suit and then applied for a stay of the delivery of the proceeding. This court had referred to the decision of the Andhra Pradesh High Court reported in ***Raghavaiah v. Lakshminarayana (AIR 1955 A.P. Page 4)*** and ***Ahmed Abdul Sukkoor v. Vallabhadas Kanji Firm (AIR 1950 Madras 219)*** and held that if a person is actually in possession of the property which is sought to be delivered in a proceeding to which he was not a party it is certainly a matter that can be recorded as an abuse of the process of the court and as such stated by a civil court in exercise of its inherent powers until the matter is adjudicated against the person in possession of the property. This court held that,

"A civil court in the exercise of its powers under Section 151, can stay proceedings in execution of a decree in an independent suit if the court comes to the conclusion that in the ends of justice or to prevent abuse of the process of Court such a stay is necessary."

3. Now turning back to the facts of this case it is true that the entitlement is with Velu. He is entitled for eviction but now the question is who has stepped into the shoes of Velu as the legal heir. The plaintiff would contend that she is the widow and defendants 1 to 3, on the other hand would contend that they are the widow and children. So unless and until an adjudication is made regarding the legal heir of deceased Velu it will not be proper to effect actual delivery of the property. Therefore just like the case referred to above here also in order to meet the ends of justice all further proceedings in the execution proceedings has to be stalled till a decision is taken in the civil suit. Therefore I set aside the order of the court below and grant a stay under Section 151 CPC whereby the further proceedings E.P.507/05 in O.S.1899/97 will be stayed.

But considering the fact that a third person is enjoying the benefit because of the fight between the persons as to the entitlement of the property it is only just that the learned Munsiff is directed to dispose of the matter within a time frame of three months from the date of receipt of a copy of this order. Needless to say that unnecessary adjournments shall be averted and at the same time opportunity be given to the parties to adduce evidence in support of their respective contentions.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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